

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee
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Hon. Terence Bruiniers, Vice-Chair
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DATE: October 9, 2007

SUBJECT: Electronic Filing and Service by Fax (amend Cal. Rules of Court,
rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306) (Action
Required)

Issue Statement

Electronic filing and fax filing are being used more frequently in the courts. It is therefore important that the current rules on e-filing and fax filing be updated to improve their application and reflect changes in practice. The proposed amendments are intended to achieve those purposes.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Amend rule 2.250 (Definitions);
2. Amend rule 2.253 (Court order requiring electronic service or filing);
3. Amend rule 2.256 (Responsibilities of electronic filer);
4. Amend rule 2.257 (Requirements for signatures in documents);
5. Amend rule 2.259 (Actions by court on receipt of electronic filing);
6. Amend rule 2.260 (Electronic service); and

7. Amend rule 2.306 (Service of papers by fax transmission).

The text of the rule amendments is attached at pages 6–11.

Rationale for Recommendation

The rules on electronic filing and service and service by fax should be amended to clarify and improve the procedures for these types of filing and service. The specific amendments recommended by the Court Technology Advisory Committee are described below.

Rule 2.250 (Definitions)

The definition of “electronic filer” in rule 2.250(3) would be amended to clarify that the term means “a party filing a document in electronic form directly with the court, by an agent, or through an electronic filing service provider.”

In addition, a new definition of “electronic notification address” would be added in rule 2.250(8). This term would be defined to mean “the electronic address at or through which the party has authorized electronic service.” The term “electronic address” is more comprehensive than an e-mail address; in an appropriate case, it might consist of a URL¹ rather than an e-mail address.

Rule 2.253 (Court order requiring electronic service or filing)

Rule 2.253(a) would be amended to clarify that the court, in an appropriate type of case, may order all documents to be served electronically, or filed electronically, or both served and filed electronically.² Rule 2.253(b)(2) would also be amended to clarify that the court’s order may provide that, when the court sends confirmation of filing to all parties, receipt of the confirmation constitutes service “if the filed document is available electronically.”

Rule 2.256 (Responsibilities of electronic filer)

Rule 2.256 would be amended to add the following sentence at the end of subdivision (b), on the format of documents to be filed electronically: “If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.”

Under this provision, a document may be filed electronically under the e-filing rules even though it would not comply with rule 2.113 requiring a firm binding at the top of the papers filed, or rule 2.115 requiring two-hole punching, or rule 3.1110(f) requiring the insertion between exhibits of hard paper or plastic taps

¹ A URL (Uniform Resource Locator) is the address of a specific Web site or file on the Internet.

² This proposal to amend rule 2.253 was recommended by the Civil and Small Claims Advisory Committee. The Court Technology Advisory Committee supported the proposal and included it in this extensive set of rule amendments on e-filing and service.

extending below the bottom of the page. In other words, under amended rule 2.256(b), where a rule on the formatting of a paper document prepared for filing would be incompatible with the filing of a document electronically, the electronically filed document would not need to comply with the provisions of the rule on the formatting of paper documents.

Rule 2.257 (Requirements for signatures on documents)

Rule 2.257 would be amended to add a new subdivision (e) that provides: “If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.”

Rule 2.259 (Actions by court on receipt of electronic filing)

Rule 2.259(a)(1) would be amended to reflect the new definition of “electronic filer” in rule 2.250(3) and to include the statement: “A document is considered received at the date and time the confirmation of receipt is created.”

Rule 2.260 (Electronic service)

Several changes would be made to rule 2.260 on electronic service. First, subdivision (a)(1) would be clarified by adding the words “when authorized by these rules” at the end.

Second, subdivision (a) would be amended to include new paragraph (3), which provides that a party who has consented to electronic service and has used an electronic filing service provider to file and serve documents consents to service on that electronic filing service provider as the designated agent for service for the party in the case, until such time as the party designates a different agent for service.

Third, new subdivision (b) would require each court that permits electronic filing in a case, by January 1, 2009 or before if possible, to maintain an electronic service list. The court would also be required to make the service list available electronically to the parties. The service list would contain the current electronic notification addresses as provided by the parties that have filed electronically in the case.

Fourth, a new subdivision (c) would be added specifying that, notwithstanding (b), parties are responsible for electronic service on all other parties in the case. This subdivision would further state that a party may serve documents electronically directly, by an agent, or through a designated electronic filing service provider.

Fifth, the current subdivision on notification of change of electronic address would be located in amended subdivision (d). A new paragraph (2) would state that a party’s election to contract with an electronic filing service provider to file and serve documents electronically does not relieve the party of its responsibility

under paragraph (1) to promptly provide notice of any changes in its electronic notification address to all parties and the court.

Rule 2.306 (Service of papers by fax transmission)

A new subdivision (b), on service lists, would be added to rule 2.306.³ This subdivision would contain a new paragraph (1) on the duties of the first-named plaintiff or petitioner in a case where the parties have agreed to service by fax. The plaintiff or petitioner would be obligated to maintain a current list of the parties that includes their fax numbers for service and furnish the list on request to any party or the court. Subdivision (b) would also contain a new paragraph (2) requiring each party in cases involving fax filing to furnish the first-named plaintiff or petitioner with its current fax number when the party first appears in the action and, if a party serves an order, notice, or pleading on a new party, to serve a copy of the service list with the fax numbers on the new party.

Alternative Actions Considered

The e-filing and fax-filing rules might have been left unchanged. But the committee thought that the proposed amendments to these rules were needed to improve the application of the rules and to implement contemporary practices.

Comments From Interested Parties

The proposed rules amendments were circulated in spring 2007. Twelve comments were received. The commentators included judges, court administrators, the State Bar's Committee on Administration of Justice, the California Association of Photocopiers and Process Servers, LexisNexis File and Serve, and Courthouse News Service. A chart summarizing the comments and the committee's responses is attached at pages 12–31.

Some changes have been made to the proposed rules as a result of the comments. For instance, at the suggestion of the State Bar's Committee on Administration of Justice (CAJ), the definition of "electronic notification address" has been modified to mean the electronic address "at or through which" the party is authorized to be electronically served. The committee also agreed with CAJ's suggestion to clarify rule 2.253(b)(2) to state that when a court sends a confirmation of filing to all parties, receipt of the confirmation constitutes service of the filing "if the filed document is available electronically."

At the suggestion of the California Association of Photocopiers and Process Servers, rule 2.253 and 2.260 have been modified to clarify that the electronic service provisions apply to all documents "except when personal service is required by statute or rule."

³ This subdivision is similar to the more general rule 3.254, which requires plaintiffs or petitioners to maintain service lists in civil cases.

In some instances, the committee decided that the suggested changes were not necessary. In other instances, commentators proposed amendments that were significantly different from or beyond the scope of the proposals that were circulated. If the committee decides to pursue some of these proposals, they will need to be circulated for public comment.

Implementation Requirements and Costs

In general, the amended rules clarify procedures for electronic filing and service and fax service and will not impose costs. However, new subdivision (b) of rule 2.260 will require courts that permit electronic filing to maintain electronic service lists by January 1, 2009 or before, if possible. This provision will require implementation and will result in some costs to the courts. The provision is necessary, however, so that courts can give electronic notice to the parties and effectively manage cases involving electronic filing and service of documents.

Attachments

Rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306 of the California Rules of Court are amended, effective January 1, 2008, to read as follows:

1 **Rule 2.250. Definitions**

2
3 (1)–(2) * * *

4
5 (3) An “electronic filer” is a party filing a document in electronic form directly
6 with the court, by an agent, or through an electronic filing service provider.

7
8 (4)–(7) * * *

9
10 (8) “Electronic notification address” of a party means the electronic address at or
11 through which the party has authorized electronic service.

12
13 **Rule 2.253. Court order requiring electronic filing and service service or**
14 **filing**

15
16 (a) **Court order**

17
18 The court may, on the motion of any party or on its own motion, after finding
19 that such an order would not cause undue hardship or significant prejudice to
20 any party, order all parties to serve and file all documents electronically in
21 any class action, a consolidated action, a group of actions, a coordinated
22 action, or an action that is complex under rule 3.403, after finding that such
23 an order would not cause undue hardship or significant prejudice to any
24 party. The court’s order may also provide that: to:

25
26 (1) Serve all documents electronically, except when personal service is
27 required by statute or rule;

28
29 (2) File all documents electronically; or

30
31 (3) Serve and file all documents electronically, except when personal
32 service is required by statute or rule.

33
34 (b) **Additional provisions of order**

35
36 The court’s order may also provide that:

37
38 (1) Documents previously filed in paper form may be resubmitted in
39 electronic form; and
40

- 1 (2) When the court sends confirmation of filing to all parties, receipt of the
2 confirmation constitutes service of the filing if the filed document is
3 available electronically.
4

5 **(b)(c) Filing in paper form**
6

7 When it is not feasible for a party to convert a document to electronic form
8 by scanning, imaging, or another means, a court may allow that party to
9 serve, file, or serve and file the document in paper form.
10

11 **Rule 2.256. Responsibilities of electronic filer**
12

13 **(a) * * ***
14

15 **(b) Format of documents to be filed electronically**
16

17 A document that is filed electronically with the court must be in a format
18 specified by the court unless it cannot be created in that format. The format
19 adopted by a court must meet the following requirements:
20

- 21 (1) The software for creating and reading documents must be in the public
22 domain or generally available at a reasonable cost.
23
24 (2) By January 1, 2020, any format adopted by the court must allow for full
25 text searching. Documents not available in a format that permits full text
26 searching must be scanned or imaged as required by the court, unless
27 the court orders that scanning or imaging would be unduly burdensome.
28 By January 1, 2020, such scanning or imaging must allow for full text
29 searching to the extent feasible.
30
31 (3) The printing of documents must not result in the loss of document text,
32 format, or appearance.
33

34 If a document is filed electronically under the rules in this chapter and cannot
35 be formatted to be consistent with a formatting rule elsewhere in the
36 California Rules of Court, the rules in this chapter prevail.
37

38 **Rule 2.257. Requirements for signatures on documents**
39

40 **(a)–(d) * * ***
41

42 **(e) Judicial signatures**
43

1 If a document requires a signature by a court or a judicial officer, the
2 document may be electronically signed in any manner permitted by law.

3
4 **Rule 2.259. Actions by court on receipt of electronic filing**

5
6 **(a) Confirmation of receipt and filing of document**

7
8 (1) *Confirmation of receipt*

9
10 When a court receives an electronically submitted document ~~directly~~
11 ~~from the filer and not through an electronic filing service provider~~, the
12 court must promptly send the electronic filer confirmation of the court's
13 receipt of the document, indicating the date and time of receipt. A
14 document is considered received at the date and time the confirmation
15 of receipt is created.

16
17 (2)–(4) * * *

18
19 **(b)–(f) * * ***

20
21 **Rule 2.260. Electronic service**

22
23 **(a) Consent to electronic service**

24
25 (1) When a notice may be served by mail, express mail, overnight delivery,
26 or fax transmission, electronic service of the notice is permitted when
27 authorized by these rules.

28
29 (2) A party indicates that ~~he or she~~ the party agrees to accept electronic
30 service by:

31
32 (A) Filing and serving a notice that the party accepts electronic service.
33 The notice must include the electronic notification address at
34 which the party agrees to accept service; or

35
36 (B) Electronically filing any document with the court. The act of
37 electronic filing is evidence that the party agrees to accept service
38 at the electronic notification address the party has furnished to the
39 court under rule 2.256(a)(4).

40
41 (3) A party that has consented to electronic service under (2) and has used
42 an electronic filing service provider to file and serve documents in a
43 case consents to service on that electronic filing service provider as the

1 designated agent for service for the party in the case, until such time as
2 the party designates a different agent for service.

3
4 **(b) Maintenance of electronic service lists**

5
6 By January 1, 2009, or before if possible, a court that permits electronic
7 filing in a case must maintain and make available electronically to the parties
8 an electronic service list that contains the parties' current electronic
9 notification addresses, as provided by the parties that have filed
10 electronically in the case.

11
12 **(c) Service by the parties**

13
14 Notwithstanding (b), parties are responsible for electronic service on all
15 other parties in the case. A party may serve documents electronically
16 directly, by an agent, or through a designated electronic filing service
17 provider.

18
19 **(d) Change of electronic notification address**

- 20
21 (1) A party whose electronic notification address changes while the action
22 or proceeding is pending must promptly file a notice of change of
23 address electronically with the court and must serve this notice
24 electronically on all other parties.
25
26 (2) A party's election to contract with an electronic filing service provider
27 to electronically file and serve documents or to receive electronic
28 service of documents on the party's behalf does not relieve the party of
29 its duties under (1).
30
31 (3) An electronic notification address is presumed valid for a party if the
32 party files electronic documents with the court from that address and has
33 not filed and served notice that the address is no longer valid.

34
35 ~~(b)(e)~~ * * *

36
37 ~~(e)(f)~~ * * *

38
39 ~~(d) Change of electronic notification address~~

- 40
41 ~~(1) A party whose electronic notification address changes while the action~~
42 ~~or proceeding is pending must promptly file a notice of change of~~

1 address with the court electronically and must serve this notice on all
2 other parties.

3
4 (2) An electronic notification address is presumed valid for a party if the
5 party files electronic documents with the court from that address and has
6 not filed and served notice that the address is no longer valid.

7
8 ~~(e)(g)~~ * * *

9
10 **Rule 2.306. Service of papers by fax transmission**

11
12 (a) * * *

13
14 **(b) Service lists**

15
16 (1) Duties of first-named plaintiff or petitioner

17
18 In a case in which the parties have agreed to service by fax, the plaintiff
19 or petitioner named first in the complaint or petition, in addition to its
20 responsibilities under rule 3.254, must:

21
22 (A) Maintain a current list of the parties that includes their fax numbers
23 for service of notice on each party; and

24
25 (B) Furnish a copy of the list on request to any party or the court.

26
27 (2) Duties of each party

28
29 In a case in which the parties have agreed to service by fax, each party,
30 in addition to its responsibilities under rule 3.254, must:

31
32 (A) Furnish the first-named plaintiff or petitioner with the party's
33 current fax number for service of notice when it first appears in the
34 action; and

35
36 (B) If the party serves an order, notice, or pleading on a party that has
37 not yet appeared in the action, serve a copy of the service list under
38 (1) at the same time that the order, notice, or pleading is served.
39

1 ~~(b)~~(c) * * *
2
3 ~~(e)~~(d) * * *
4
5 ~~(d)~~(e) * * *
6
7 ~~(e)~~(f) * * *
8
9 ~~(f)~~(g) * * *
10
11 ~~(g)~~(h) * * *

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rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee's Response
1.	Michael D. Belote On behalf of the California Association of Photocopiers and Process Servers (CAPPS) Sacramento, CA	AM	Y	<p><u>Rule 2.253:</u> This rule permits the court to order the filing and/or service of documents electronically. While we recognize that the proposed changes merely re-order the contents of the existing rule, we believe that this proposal represents an opportunity to eliminate any possible confusion concerning the existing language. Specifically, the language authorizes court to “serve all documents electronically,” which could be misinterpreted to permit electronic service of summons’ and complaints, subpoenas, and other documents which require personal service under California law. We understand that this is not the intent of the language, which is designed to focus instead on secondary notices to opposing counsel and parties, which occur after cases are commenced. To eliminate any potential ambiguity, we would recommend that subdivision (a)(1) be amended to read:</p> <p style="padding-left: 40px;">(1) Serve all documents electronically, <u>except documents requiring personal service;</u></p> <p><u>Rule 2.260:</u> This rule relates to consent to electronic service. New subdivision (c) would provide that “A party may serve documents electronically either directly or through a designated electronic filing service provider.” Here, we are concerned that the reference to the party serving documents “directly” could be misinterpreted to narrow the</p>	<p>The committee agreed that the rule should be modified to eliminate ambiguity. Instead of the proposed language, it has added after (a)(1) and (a)(3) the words “except when personal service is required by statute or rule.”</p> <p><u>Rule 2.260:</u></p>

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				<p>parties presently involved in service. Specifically, our members are sometimes called upon to serve documents electronically on behalf of parties and their attorneys, after the commencement of cases subject to this rule. Therefore, to prevent confusion, we recommend that the subdivision be amended as follows:</p> <p>“(c) Notwithstanding (b), parties are responsible for electronic service on all other parties in the case. A party may serve documents electronically either directly, <u>including the use of those authorized to serve process</u>, or through a designated electronic filing service provider.”</p>	<p>The committee agreed that rule 2.260(c) should be revised to make it clearer. Instead of the proposed language, it has added “by an agent” after “directly.” The term “agent” includes, but is more comprehensive than, “those authorized to serve process.”</p>
2.	Saul Bercovitch, Staff Attorney Committee on Administration of Justice State Bar of California San Francisco, CA	AM	Y	<p><u>Filing and Service by Electronic Means</u></p> <p>Committee on Administration of Justice’s (CAJ’s) introductory comments</p> <p>Because electronic filing and service are not yet widely used or accepted in California and the courts that do allow electronic filing and service vary in their practice and usage, CAJ was not able to evaluate these proposed rules in connection with a specific system that the rules may be designed to govern. It is also difficult to anticipate the specific problems and issues that these rules are designed to address, given the absence of a uniform statewide system and the variety of systems that are being used today. At present, some courts allow electronic document filing and service through commercial electronic</p>	<p><u>Filing and Service by Electronic Means</u></p>

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				<p>filing service providers only, while others may allow filing or service directly by the parties, but only in certain cases. For all of these reasons, CAJ's comments are made without any specific electronic document filing and service system in mind, and some of the points that are made would possibly be modified, if and when specific systems are developed further.</p> <p>1. <u>Rule 2.250. Definitions</u></p> <p>CAJ supports the proposed amendments to this rule, but believes the proposed definition of "electronic notification address" should be modified. First, the proposed definition does not include any requirement that electronic service on a party must be <i>authorized</i> for an e-mail address to constitute an "electronic notification address." Second, the term "proxy address" is ambiguous. For these reasons, CAJ recommends that the definition be modified to read as follows: "<u>The 'Eelectronic notification address' of a party means the e-mail address of a at or through which the party or the proxy address of a third party through which a party is authorized to be electronically served.</u>"</p> <p>2. <u>Rule 2.253. Court order requiring electronic service or filing</u></p> <p>CAJ supports the proposed amendments to this rule, subject to the comments below.</p>	<p>1. <u>Rule 2.250. Definitions</u></p> <p>The committee agreed that the definition of "electronic notification address" should be modified. It has revised the proposed CAJ definition. The definition uses the more comprehensive term "electronic address," which would include a URL as well as an e-mail address.</p> <p>2. <u>Rule 2.253. Court order requiring electronic service or filing</u></p>

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				<p>CAJ recommends (1) deleting the article before each item in the series in (a) after “class action” to improve parallelism (i.e., “any class action, consolidated action, group of actions, coordinated action, or action that is complex . . .”); and (2) defining “group of actions” or using a more certain term. The other terms listed all reflect a formal designation, but there is no “group of actions” designation that CAJ is aware of, and the meaning of the term is uncertain.</p> <p>CAJ questions the meaning and usefulness of rule 2.253(b)(2). The rule states that the parties’ receipt of a “confirmation of filing” sent by the court “constitutes service of the filing.” The term “filing” is not defined. If the “filing” means the document that was electronically filed, CAJ suggests that the rule be amended to expressly so state. Moreover, it seems that a party’s receipt of a “confirmation of filing” from the court should constitute service of the electronically filed document on that party only if the filed document is available to that party electronically. Finally, the rule as written may allow the argument that a party’s receipt of a “confirmation of filing” sent by the court did not constitute service of the filed document on that party if, due to inadvertence or an incomplete electronic service list, the court failed to serve “all parties.” For all of these reasons, CAJ recommends amending the rule to read as follows: “When <u>If</u> the court sends</p>	<p>The committee disagreed that a different term than “group of actions” should be used. This term is from the corresponding statute (See Code Civ. Proc., § 1010.6(a)(8)). The rule and the statute should be the same.</p> <p>Rule 2.253(b)(2) is part of the existing rule and has proven useful; however, the committee agreed that</p>

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				<p>confirmation of filing to all parties <u>any party other than the electronic filer</u>, receipt of the confirmation constitutes service of the filing <u>filed document on that party, if the filed document is available electronically to that party.</u>"</p> <p>Rule 2.253(b) describes optional additional provisions of an order requiring electronic filing and/or service, but there is no mention of an optional, or mandatory, provision requiring parties that have not previously provided an "electronic notification address" (as defined above to mean an e-mail address at or through which a party is authorized to be served electronically) to promptly provide such an address. CAJ recommends that a provision for such an order be added.</p> <p>As a separate but related issue, CAJ notes that rule 2.111 provides that the first page of a paper presented for filing must state the attorney's "e-mail address (if available)." The rule states that the inclusion of an e-mail address "does not constitute consent to service by . . . e-mail unless otherwise provided by law." Thus, absent some other designation of an electronic notification address, the e-mail address on the first page of a filed document can be used for electronic service pursuant to an order under rule 2.253(a) requiring electronic service, but only if such an order constitutes "consent to service by . . . e-mail" within the meaning of</p>	<p>rule 2.253(b)(2) should be clarified. It has added "if the filed document is available electronically" at the end of subpart (2).</p> <p>The committee did not think this needs to be added to rule 2.253. Parties have a duty to provide electronic notification addresses, and to update them, under rules 2.256(a)(4)–(5), 2.260(a)(2)(A) and (d).</p> <p>The amendment of rule 2.111 is beyond the scope of this proposal. The committee has referred this suggestion to the Civil and Small Claims Advisory Committee for its consideration.</p>

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				<p>rule 2.111. An order by the court would “authorize” service by e-mail, but would not appear to constitute a party’s “consent” to service by e-mail. CAJ therefore recommends that rule 2.111 also be amended to state that the inclusion of an e-mail address “does not authorize service by e-mail unless otherwise provided by law” to allow use of that e-mail address in these circumstances.</p> <p>3. <u>Rule 2.256. Responsibilities of electronic filer</u></p> <p>CAJ supports the proposed amendments to this rule.</p> <p>4. <u>Rule 2.257. Requirements for signatures on documents</u></p> <p>CAJ supports the proposed amendments to this rule but notes a typographical error -- the word “matter” should be replaced with “manner.”</p> <p>5. <u>Rule 2.259. Actions by court on receipt of electronic filing</u></p> <p>CAJ supports the proposed amendments to this rule.</p> <p>6. <u>Rule 2.260. Electronic service</u></p> <p>CAJ supports the proposed amendment to this rule, except with respect to proposed (a)(3).</p>	<p>3. <u>Rule 2.256. Responsibilities of electronic filer</u></p> <p>No response required.</p> <p>4. <u>Rule 2.257. Requirements for signatures on documents</u></p> <p>This correction has been made.</p> <p>5. <u>Rule 2.259. Actions by court on receipt of electronic filing</u></p> <p>No response required.</p> <p>6. <u>Rule 2.260. Electronic service</u></p>

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				<p>Proposed (a)(3) provides that if a party uses an electronic filing service provider, the party automatically consents to service on that provider as the party's designated agent for service in the case until the party designates a different agent for service. CAJ believes that application of this proposed amendment could be problematic if a party has previously designated a different electronic notification address, or the electronic service provider has multiple e-mail addresses for different purposes. CAJ recommends that (a)(3) be limited to only those situations where the party has not otherwise designated an electronic notification address, as follows: "A party that has consented to electronic service under (2)(B) and has used an electronic filing service provider to file and serve <u>any</u> documents in a case consents to <u>electronic</u> service on that electronic filing service provider, <u>at the electronic notification address provided by the electronic filing service provider</u>, as the designated agent for service for the <u>that</u> party in the case, <u>unless the party has designated a different electronic notification address or until such time as the party designates a different agent for service electronic notification address.</u>"</p> <p>Some members of CAJ also expressed concern about placing the burden on the court to maintain the electronic service list and to make it available to all parties. Because CAJ is unclear as to the methods and procedures that</p>	<p>The committee thought that these changes are not necessary. The provision is sufficiently clear as written. This will enable the courts to send notices electronically and better manage cases involving electronic filing and service.</p> <p>The committee believes that by no later than January 1, 2009, courts that permit electronic filing should maintain and make available electronic service lists containing</p>

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				<p>may be envisioned for electronic filing, CAJ is unable to fully comment on this requirement at this time.</p> <p>CAJ also recommends that rule 2.260(a)(1) be amended to expressly state that it is limited to circumstances where electronic service on a party is authorized by these rules. As currently stated, the rule seems to state that electronic service is permitted whenever service by mail is permitted.</p> <p><u>Filing and Service by Fax</u></p> <p>7. <u>Rule 2.306 Service of papers by fax transmission</u></p> <p>CAJ questions proposed (b) as drafted. CAJ believes the proposal will only work in cases in which <i>all</i> parties have agreed to accept service by fax for all purposes. Currently, a party may agree to accept service with some parties for some documents, but not all parties for all documents. The plaintiff/petitioner will not be able to maintain a list if different parties have different agreements concerning fax filing with one another, particularly if the plaintiff/petitioner is not a party to the agreement. In addition, it is unclear whether the</p>	<p>the parties' current electronic notification addresses. Though this will impose some burden on the courts, it is necessary so that they can send notices and manage cases when documents are filed and served electronically.</p> <p>The committee agreed and added the words "when authorized by these rules" at the end of rule 2.260(a)(1).</p> <p>7. <u>Rule 2.306 Service of papers by fax transmission</u></p> <p>The committee did not think the proposed amendments should be omitted or modified. The proposed amendment to rule 2.306 is compatible with, and supplements, more general rule 3.254 on service lists. Rule 2.306(b) clarifies how parties are to be informed about the fax numbers for service of parties that have agreed to service by fax.</p>

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				<p>plaintiff/petitioner is required to furnish a copy of the fax service list on parties that have not agreed to accept service by fax. CAJ recommends that the proposed amendment to rule 2.306 either not be adopted at all or clarified to apply only in cases in which all of the parties have agreed to accept service by fax for all purposes.</p> <p>If the proposed amendment is to be adopted in some form, CAJ notes that there is a typographical error in (b)(2)(B) – the word “had” should be replaced with “has.”</p>	The correction has been made.
3.	Stephen A. Bouch Executive Officer Superior Court of California, County of Napa Napa, CA	A	N	No specific comments.	No response required.
4.	Sujatha J. Branch Staff Attorney Protection & Advocacy, Inc. Oakland, CA	AM	Y	Based on our experience in litigation of individual and impact cases and class action cases, particularly cases with numerous parties and lengthy filings, Protection and Advocacy, Inc. (PAI) believes that California’s system for electronic filing would benefit from being updated. Our understanding is that in some California courts, parties file paper documents; the courts then make the documents available to the public by imaging or scanning the paper documents and posting them on the Internet. This system is inefficient and expensive for the courts and fails to take advantage of the fact that most litigants produce documents in electronic	The committee has considered the comments from PAI.

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				<p>format before filing or serving them.</p> <p>The amendment to rule 2.253(a) would allow courts to order electronic service and/or filing of documents as long as such an order “would not cause undue hardship or significant prejudice to any party.” This rule draws an appropriate balance between full and efficient use of available technology and avoiding action that would be burdensome for low-income litigants. For example, while some litigants representing themselves in propria persona may benefit from electronic filing and service, others may not have access to computers, or may lack the resources to print lengthy filings by the opposing party in hard copy. Therefore, we suggest an amendment clarifying that courts should require parties to serve hard copies on individuals filing in propria persona or individuals without access to computers.</p> <p>At the same time, PAI applauds efforts to increase the availability of documents in electronic form. Electronic service and filing makes litigation-related documents more accessible to both attorneys and litigants with certain disabilities, such as people with vision impairments or blindness, and people whose physical disabilities make it difficult or impossible for them to manipulate pieces of paper. Use of appropriately formatted electronic documents allows such individuals to use assistive technology, including specially</p>	<p>As the commentator notes, the current rule contains a provision that an order requiring e-filing not cause undue hardship or prejudice. The rule applies only to class actions, complex, and other more complicated cases. The rule addresses the situation of self-represented persons involved in such cases on a case-by-case basis. The committee will consider whether a rule along the lines suggested should be added as e-filing expands to cover a broader range of cases and more self-represented litigants.</p> <p>The committee supports the concept that assistive technology should be made available. However, prescribing a particular format for electronically-filed and served documents is beyond the scope of the rules proposal that was circulated. The committee agreed that the issue of the appropriate format for documents warrants further investigation and consideration.</p>

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				adapted computers, to read documents independently. Appropriate formatting, however, is critical to accessibility. Documents should be filed and served in text format, which allows the use of screen readers to read the documents on a computer. Further, as courts establish methods for electronic filing, and as technology develops, it is critical for the needs of people with disabilities to be taken into account in choosing among available formats and programs.	
5.	Joseph Chairez President Orange County Bar Association Irvine, CA	AM	Y	<u>Rule 2.260</u> Rule 2.260(a)(3) should be stricken. Parties should not be required to appoint an electronic service provider as their agent for service of process in the case for any period of time without the party making an affirmative choice. Rather, a party should not be able to file electronically unless it provides an electronic notification address to the court in accordance with rule 2.260(a)(2) and that address should be the sole address used by the party for electronic service. Similar comments apply to rule 2.260(d)(3). Similarly 2.260(c) should be modified only to allow for service at the address designated by the party as its address for electronic service.	<u>Rule 2.260</u> The committee disagreed that the rule should be stricken. Subdivisions (a)(3) and (d)(3) are appropriate. The use of an electronic service provider to serve and file documents should constitute consent for service on that provider, until the party designates another agent for service. This will clarify how service is to be effectuated, which otherwise might be ambiguous.
6.	Kelli Hokanson California Operations Manager LexisNexis File and Serve	AM	Y	<u>Rule 2.250. Definitions</u> "Electronic notification address" means the e-mail address of a party, the name of the	The committee has revised the definition of "electronic notification

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	San Diego, CA			electronic filing service provider or the proxy address of a third party through which a party is to be electronically served. In the alternative, we would request further explanation of the term "proxy address."	address." (See response to comment 2.)
7.	Hon. Harold W. Hopp Judge of the Superior Court of California, County of Riverside Indio, CA	AM	N	<u>Rule 2.253</u> I suggest that you delete the comma in the phrase, "action that is complex under rule 3.403, to" in rule 2.253(a) as revised, so that it reads "action that is complex under rule 3.403 to." The comma was appropriate in the current version of the rule, but not after two sentences are combined and the phrase set off by the comma is deleted. Also, and more importantly, why is the rule limited to only certain types of cases? The appropriate committees should consider making this rule applicable to all civil cases.	<u>Rule 2.253</u> This change has been made. The statutory authority for the rule limits it to the types of cases specified in the rule. (See Code Civ. Proc., § 1010.6(a)(8).)
8.	Hon. Carolyn B. Kuhl Managing Judge, Complex Litigation Program Superior Court of California, County of Los Angeles Los Angeles, CA	AM	N	<u>Rule 2.253</u> I agree with the comments of my colleague Judge Carl West. Revised rule 2.253 should permit (but not require) a court to order that the parties select a single electronic service provider and use that common provider for all service. In this way, the parties and the court will have a common database of documents. When CCMS is fully implemented, use of a common e-service provider may not be necessary. But until then, courts should have the flexibility to use this case management tool.	The committee did not incorporate the proposed rule change into the current amendments. The proposed rule change is sufficiently important and different from the rule as circulated that it would need to be separately circulated for comment. The committee will consider this issue in the future.

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9.	Superior Court of California, County of Los Angeles Los Angeles, CA	AM	Y	<p><u>Rule 2.260</u> Proposed Rule 2.260(c) would permit a party to directly serve documents electronically or to use an e-service provider, at the party's election.</p> <p>In a court such as ours, which does not have e-filing capabilities, the use of a Web-based e-service provider insures that there is a record of service and further provides ready access to all served documents by the court and the parties. For courts that may not be able to implement an e-filing system for some time, the access to e-served documents through a Web-based e-service provider provides an invaluable tool for monitoring and managing complex cases.</p> <p>By contrast, orders that do not designate an e-service provider have many drawbacks. They delay receipt by the court of served documents; they unduly burden the court clerk with receipt of high volumes of e-served documents, and they lack a means of verification of service.</p> <p>In cases with multiple parties, if some of the parties were able to opt to use a Web-based provider and others were to use direct e-service, there could be significant confusion, as parties will not know where to expect to find their e-served documents. Similarly, the court will not have a single site on which to check for documents served in a particular case. Absent an internal electronic file cabinet for each case, the court would be unable to benefit from the</p>	<p><u>Rule 2.260</u> The committee has considered the court's comments.</p>

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				<p>accessibility of e-served documents.</p> <p>We would suggest that the proposed rule be modified to pick up the language from current Rule 2.553 and provide that in "any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under Rule 3.403, the court may order <u>that electronic service be accomplished through a Web-based e-service provider designated by the parties or the court.</u>"</p> <p>If there is a concern about the process for selection of a Web-based provider, we suggest that the parties be permitted to identify preferred providers, and in the absence of agreement, the court be permitted to select from the providers identified by the parties.</p>	<p>The committee did not incorporate the proposed rule change into the current amendments. The proposed rule change is sufficiently important and different from the rule as circulated that it would need to be separately circulated for comment. The committee will consider this issue in the future.</p>
10.	Rachel Matteo-Boehm, Attorney Courthouse News Service Pasadena, CA	AM	Y	<p>Courthouse News’ primary concern is the inequities in media access to court records that can result from e-filing programs built around only one electronic filing service provider (“EFSP”), since such programs tend to give the selected EFSP preferential access to the public court record. Its comments on the pending amendments are thus geared toward encouraging the adoption of e-filing programs that allow filing parties to pick from several EFSPs—the stated goal of the California Administrative Office of the Courts—and limiting the expansion of mandatory e-filing in those courts where a single entity currently has preferential access to the court record by virtue</p>	<p>The committee has considered all of Courthouse News Service’s comments. [Because of the length of the comments, they have been edited for inclusion in the chart.]</p>

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				<p>of its status as the chosen EFSP.</p> <p>The convergence of technology and communications is rapidly changing the sources from which members of the public get their news, and the format in which that news is delivered. In keeping with this trend, EFSPs are increasingly engaging in news reporting and news alert activities similar to those of electronic newspapers and news wire services such as Courthouse News. In those courts where an e-filing program is built around only one EFSP, either for all cases or for a certain category of cases, and that EFSP (1) retains a copy of e-filed documents, serves as the repository for e-filed documents and/or provides electronic document management services in addition to facilitating e-filing and service; and (2) is permitted to publicly disseminate the documents and/or information from those documents (including but not limited to the fact that a particular court filing has been made), the result can be that a private company obtains monopoly control over public court records and preferential access to those records as compared to other members of the media, both in terms of cost and timing. The preferential access issues that can arise include:</p> <p>Cost—If the exclusive EFSP (which has already been compensated for enabling e-filing through a fee paid by the e-filing party) enjoys free access to the electronic version of the court</p>	

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				<p>record, while other members of the media must pay a fee for the same instantaneous electronic access, other members of the media face an obvious disadvantage.</p> <p>Timing—Even in those cases where the media has access to e-filed documents free of charge (e.g., through a Web site maintained by the court or the EFSP), problems of preferential access can result where the exclusive EFSP has access to court documents before those documents are posted for electronic viewing. Unless there is a system to provide members of the media with the opportunity to access e-filed documents at the time of filing or immediately thereafter, the EFSP enjoys a period of exclusivity after the filing of every e-filed document during which it is the only member of the media to have access to the documents.</p> <p>It is Courthouse News' understanding that the California Administrative Office of the Courts has developed e-filing specifications that are intended to allow California courts to receive and respond to electronic filings from any compliant EFSP using open source software, thereby giving litigants their choice of EFSPs. See generally California Administrative Office of the Courts, <i>Electronic Filing Technical Standards Project: Technical Standards</i> 4, 8 (2001) (“there must not be monopolies for electronic filing services, either statewide nor within a jurisdiction.... We assume many</p>	

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				<p>providers will develop applications for electronic filing, given the advent of open standards and a level playing field with universal electronic access to courts.”)</p> <p>Courthouse News strongly supports this approach, as it would reduce the risk of any one EFSP having effective control of the court record and the corresponding risk of one member of the news media having preferential access to the court record over competing members of the media. For the same reason, Courthouse News supports e-filing systems based on the current 2GEFS and similar open standards, which make it possible to have a multiple-EFSP system.</p> <p>At the same time, we understand that certain California courts have adopted single EFSP e-filing programs, purportedly on an interim basis, using software that is not 2GEFS compliant and is proprietary to that EFSP. Such arrangements put the public record in the hands of a single private publisher and raise a significant risk of discriminatory access to the public court record in terms of both cost and timing, in violation of the First Amendment. [Citations omitted.]</p> <p>In those cases where an e-filing system is built around only one EFSP, and that EFSP is permitted to use and disseminate information from e-filed documents, it is not enough to ensure that the same information is available to other members of the media at the courthouse</p>	

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				<p>itself. Even setting aside the questions that would arise as to timing preferences (e.g., whether e-filed documents would be available for media review at the courthouse at the same time they were received by the EFSP, and whether the EFSP would have early and exclusive access to e-filed documents received before or after regular court hours), enabling one EFSP to have remote access to court records while requiring all other members of the media to make a physical visit to the courthouse to obtain the same records would give the EFSP an unfair advantage. [Citations omitted.]</p> <p>In light of the risks of disparate media access associated with single-ESFP systems and the stated desire of the California Administrative Office of the Courts to adopt a multiple-EFSP system, Courthouse News respectfully suggests that the Rule of Court 2.253 be further amended to provide that a court may not order mandatory e-filing unless it has first adopted a program that allows for the filing party to select from two or more different EFSPs.</p> <p>In the event the Judicial Council determines that such an amendment is not feasible, Courthouse News urges the Judicial Council to continue to limit mandatory e-filing to only those limited categories of cases described in rule 2.253 until such time as the court in question has adopted a multiple EFSP e-filing program.</p>	<p>The commentators' suggestion is beyond the scope of the present proposal that was circulated for comment. The proposed rule change is sufficiently important and different from the proposal that was circulated that it would need to be separately circulated for comment. The committee will consider this issue in the future.</p> <p>The list of cases for which e-filing may be ordered under rule 2.253 is not changed under the current proposed amendments.</p>

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11.	Michael M. Roddy Executive Officer Superior Court of California, County of San Diego	A	Y	No specific comments.	No response required.
12.	Carl J. West Judge of the Superior Court of California, County of Los Angeles Los Angeles, CA	AM	N	<p>As a member of the Complex Panel in Los Angeles, I have entered e-service orders in most of my cases. These orders provide for the mandatory use of a Web-based e-service provider.</p> <p><u>Rule 2.260</u> I have concerns regarding the language of proposed rule 2.260(c) that appears to permit a party to directly serve documents electronically or to use an e-service provider, at the party's election. I have previously used e-service orders that did not designate an e-service provider. Such orders have many drawbacks. They delay receipt by the court of served documents, they unduly burden the court clerk with receipt of high volumes of e-served documents, and they lack a means of verification of service.</p> <p>In a court such as ours, which does not have e-filing capabilities, the use of a Web-based e-service provider insures that there is a record of service and further provides ready access to all served documents by the court and the parties. For courts that may not be able to implement an e-filing system for some time, the access to e-served documents through a Web-based e-service provider provides an invaluable tool for monitoring and managing</p>	The committee notes the commentator's concern about rule 2.260(c).

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				<p>complex cases.</p> <p>I believe that the use of Web-based providers by some parties and direct e-service by others in large cases with multiple parties will lead to significant confusion, as parties will not know where to expect to find their e-served documents. Similarly, the court will not have a single site on which to check for documents served in a particular case. Absent an internal electronic file cabinet for each case, the court would be unable to benefit from the accessibility of e-served documents.</p> <p>At the least, I would suggest that the proposed rule be modified to pick up the language from current rule 2.253 and provide that in "any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under Rule 3.403, the court may order <u>that electronic service be accomplished through a designated Web-based e-service provider designated by the parties or the court.</u>"</p> <p>If there is a concern about the process for selection of a Web-based provider, I suggest that the parties be permitted to identify preferred providers, and in the absence of agreement, the court be permitted to select from the providers identified by the parties. I have employed this approach in my court and have not experienced any problems.</p>	<p>The committee did not incorporate the proposed rule change into the current amendments. The proposed rule change is sufficiently important and different from the rule as circulated that it would need to be separately circulated for comment. The committee will consider this issue in the future.</p>